

States of Emergency without Rule of Law: The Case of Venezuela

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In its recent [report of May 8 on Venezuela](#), the Inter-American Commission on Human Rights (IACHR) denounced the “serious human rights crisis” ongoing in the state due to the lack of judicial independence and the Rule of Law. For Venezuela, the COVID-19 pandemic has hit a country that already has been in a multifaceted crisis for years and whose political situation has impeded any approach based on [human rights being at the front and center of government responses to the pandemic](#), as had been recommended by Michelle Bachelet, UN High Commissioner for Human Rights.

Nicolás Maduro, who still holds the presidency, declared a state of alarm on March 13, 2020, invoking the need to counter the pandemic. However, the [corresponding decree](#) not only contradicts the constitutional provisions for states of exception but is also being employed to impose abusive limitations on human rights, to aggravate political repression and persecution, to blur the seriousness of certain socio-economic problems, and to contain social protests. The absence of judicial and parliamentary controls that could counteract these excesses of power has resulted in an autocratic shift within a context that was already authoritarian. While in several regions of the world efforts have intensified to recover social and democratic normalcy, interrupted by the pandemic, in Venezuela democratic normalcy is something that has yet to be built.

A lost normalcy

The pandemic found Venezuela in circumstances of economic and social devastation, and authoritarian rule. Amid the already existing social and economic shutdown, general confinement has been [imposed de facto](#) on March 17, which is being instrumentalized to cover the fuel shortage, to contain prospective social protest, and to adopt measures for persecuting critical voices. Given that the incumbent regime had already isolated the country and due to the accelerated and desperate emigration during the [last number of years](#), the number of COVID-19 infections apparently has affected the country to a [minor extent](#) when compared to other Latin American countries. Nevertheless, its social and political impact increases as a consequence of the deterioration of health services, limited access to [food and potable water](#), as well as to adequate housing, especially in areas with major poverty concentrations. In addition, the measures taken by the Government lack legal legitimacy because the general lockdown is not provided for in the decree that declared the state of alarm. In the current situation, a significant increase of coronavirus cases would entail the immediate overload of an already collapsed health care system and result in a major collective tragedy.

In the following lines, we will examine the precarious regulatory frame that the Government of Nicolás Maduro has created to combat the pandemic, and which has served as an instrument to handle more comfortably the preexisting political and socio-economic crisis, instead of resolving it.

A permanent exception to the Constitution

The Venezuelan Government decreed the state of alarm on [March 13, 2020](#), which was extended for another thirty days on [April 12](#) and on [May 13](#). The state of alarm represents one of the three modalities of a state of exception foreseen in article 338 of the [Constitution](#), along with the state of economic emergency and that of internal or external commotion. It applies in the case of catastrophes or public calamities and consequently, its invocation is appropriate regarding the scope of the coronavirus pandemic. According to the Constitution, the state of alarm should last for up to 30 days and can be prolonged for the same time. When the extension period of the first decree was over, Maduro issued another decree to declare an alleged new state of alarm based on similar grounds, which – again – was not submitted to the National Assembly, although its approval is necessary according to the Constitution.

Though the corresponding decrees do not refer to a restriction of constitutional guarantees, they are being invoked, however, to limit the freedom of movement, the right to assembly and other rights. This is unconstitutional, since, in the absence of an explicit restriction on guarantees in these decrees, only the ordinary legality, applicable in normal circumstances – for example, article 62 of the [Organic Law of Health](#) –, can regulate the exercise of fundamental rights. According to article 339 of the Constitution, the decree that declares the state of exception “shall provide for regulating the right whose guarantee is restricted”, and therefore, if that restriction is not explicitly stated, the Government must act on the basis of the existing laws. But the Executive has invoked the state of alarm to impose exorbitant restrictions of constitutional rights that are not foreseen neither in the decree of state of alarm, nor in the aforementioned laws. Additionally, article 339 also indicates that the declaration of a state of alarm requires approval by the National Assembly, but the Executive [did not forward the respective decrees](#) to the parliament. This being the consequence of a [judgment](#) from 2016 from the Constitutional Chamber of the Supreme Court of Justice, which has been a leading actor in the dismantling of democracy in Venezuela. The Court declared that any acts or regulations issued by the National Assembly are null and void and that the parliamentary organ itself is disqualified from exercising its constitutional functions, until it complies with some rulings –restrictive of parliament functions – that were [issued by said Court](#).

It is important to add that Venezuela has been under a state of exception since January 2016, when a state of economic emergency was declared, and that still is in place, after the national productive apparatus had been strangled by state interventionism. The [dismantling of democracy and Rule of Law](#) materializes in the overlapping of the current state of alarm with a state of exception of an economic nature, that has lasted unconstitutionally more than four years and is based on a scheme of authoritarian government.

As explained above, the state of alarm decreed in March 2020 by Nicolás Maduro has not been approved by the National Assembly and is entirely unconstitutional. Nevertheless, it has given space to the imposition of *de facto* measures, not provided for in the respective decrees. Among them are community quarantine or general containment, which could be justified in the light of the dangers associated with the pandemic, but which were adopted unconstitutionally, favoring arbitrary management of the health crisis, given that Nicolás Maduro announces measures frequently by public statements without any normative basis and modifies them at will. The Military represents an important contribution to the Government in the implementation of those dispositions. An illustration thereof is the way the authorities reacted with respect to the [return of Venezuelans from Colombian territory](#), who had been forcibly displaced due to the precarious economic situation in Venezuela. After many of them lost their source of income as a result of the [curfew imposed in Colombia](#), many decided to return to their home country. However, the Government considered adopting indiscriminate and disproportional measures of [internment](#) amounting to a deprivation of personal liberty of every migrant, which clearly go beyond preventive home quarantine, and frequently in precarious sanitary and accommodation conditions. Other actions of the Executive are contained in [formal resolutions](#) dictated during the state of alarm but are not supported by specific norms of the respective decrees of March 13 and May 12, 2020.

Moreover, the regime has used the state of alarm to further strangle the few private productive entities that have survived the national devastation. When faced with emerging revolts and potential looting in some localities, motivated by the need of the most vulnerable population to go out to the streets for obtaining a source of daily sustenance, in a context of inflation and permanent currency devaluation, the Government stuck to its usual populist strategy of [blaming others](#) and strengthening the regime of prices control, which is likely to cause supply problems similar to those already suffered in previous months. Both the strict price controls that have been in place for several years and the state of economic emergency, imposed in 2016, have comprised far-reaching intervention measures, all of which has encouraged, rather than prevented, shortages of basic commodities.

The authoritarian harnessing of the pandemic

The number of confirmed COVID-19 cases and the trend in rate of infection indicate that apparently the pandemic, up until now, has not had the exponential increase that could be originally expected. It is not possible to verify whether the official data is true, given the lack of transparency and the [absence of information from independent media or research institutions](#) on the matter. In any case, the strict quarantine implemented by the Government has proven to be useful for fulfilling other political ends, regardless of the function it may have fulfilled from a health point of view. In addition to the advantages of concealing or mitigating the fuel shortage, the general quarantine has put a restraint on public protests supported by both the public sectors, severely affected due to the structural situation and the impossibility of acquiring resources to live, and also by university students, social actors and political forces who since the beginning of that year have been holding [protests](#) to

call for the respect of the powers of the National Assembly and for holding free and equal elections for the Presidency of the Republic.

The curtailment of rights related to civic protest and public opinion is very much within the Executive's interest. This has been seen reinforced by the [violations of the right to freedom of expression](#) that journalists and professionals of the health sector have experienced when they have tried to disseminate information referring to COVID-19 or to the manner in which the competent administrative bodies are acting to restrain contagion and to attend to the affected.

Absence of controls

The Government has been favored by the absence of judicial and parliamentary controls. The Supreme Court of Justice [lacks independence](#), as it is captured by the Government. The functioning of the judicial branch in its entirety has been [restricted since March 13, 2020](#), though it had not previously been able to offer the guarantees of a fair process nor be in a position to characterize itself as a protector of human rights. As for the National Assembly, it is blocked in its functions by rulings of the Supreme Court, especially of its Constitutional Chamber, and has been impeded by means of [factual measures](#) from holding sessions at the Federal Legislative Palace. At the same time a [parallel National Assembly](#) and an alleged "[National Constituent Assembly](#)" have been established, both of them dominated fraudulently by Government forces and dedicated to support the persecution of opposition leaders or dissidents in general. On the other side, international controls are reduced as the Executive [withdrew](#) from the American Convention on Human Rights in 2012 – the withdrawal was effective [a year later](#) – and from the Charter of the Organization of the American States (OAS) in 2017, which would have been effective in 2019 but [is still being considered](#) by the OAS. The validity of these withdrawals [has been objected](#) to. The Inter-American Commission continues to fulfil its function to [promote and defend human rights](#) with respect to Venezuela, although it faces great obstacles given the defiance of the Venezuelan State organs in relation to its reports or decisions. The UN High Commissioner for Human Rights was exceptionally authorized to visit the country between 19 and 21 June 2019, and since then has [continued to monitor](#) the existing human rights situation, making observations and recommendations, but these have for great part been ignored.

Assessment and perspectives

The state of alarm decreed by Nicolás Maduro and the emergency measures that he has issued in breach of the Constitution, on the pretext of dealing with the pandemic, have been conducive to a greater legal insecurity, arbitrariness in governmental action, and human rights violations. In this context, there is no way to ensure the proportionality, necessity and temporariness of emergency provisions, and the legality that should govern during states of emergency has been set aside. It is foreseeable that the regime will prolong the current status quo, through successive and unconstitutional extensions of the state of alarm, with a quarantine or general confinement that immobilizes society and camouflages the magnitude

of the economic crisis and especially the energy collapse. The data on coronavirus infections, true or not, will be used for justifying such measures that go beyond what in reality is required.

The current Venezuelan experience confirms that the states of emergency, declared or not, can be used to reinforce authoritarian domination. Only a fundamental reframing of the political and economic model imposed in Venezuela, that would encompass pluralism, human rights and participation of all sectors, could permit to take the first steps of a long road towards constructing democratic normalcy.

